



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-138]

Pentafluoroethane (R-125) from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist, in part, with respect to imports of pentafluoroethane (R-125) from certain producers and exporters from the People's Republic of China (China).

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Joshua Tucker or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2044 or (202) 482-6172, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On January 11, 2021, Commerce received a countervailing duty (CVD) petition concerning imports of R-125 from China filed in proper form on behalf of the petitioner, Honeywell International, Inc.<sup>1</sup> On February 1, 2021, we initiated this investigation,<sup>2</sup> and on June 25, 2021, we published an affirmative *Preliminary Determination*.<sup>3</sup>

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<sup>1</sup> See Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to sections 701 and 731 of the Tariff Act of 1930, as Amended, on Behalf of Honeywell International, Inc.," dated January 11, 2021 (Petition).

<sup>2</sup> See *Pentafluoroethane (R-125) from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 86 FR 8589 (February 8, 2021) (*Initiation Notice*).

<sup>3</sup> See *Pentafluoroethane (R-125) from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 86 FR 33648 (June 25, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Commerce selected Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. (Juxin) and Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei) as the individually-examined respondents in this investigation.

On June 4, 2021, the petitioner alleged that critical circumstances exist with respect to imports of R-125 from China, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.<sup>4</sup> On June 10, 2021, Commerce requested monthly shipment data from Juxin and Sanmei for subject merchandise for the period August 2020 to May 2021, which Commerce received on June 17, 2021.<sup>5</sup>

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), because the petitioner submitted its critical circumstance allegation more than 30 days before the scheduled date of the final determination,<sup>6</sup> Commerce will make a preliminary finding as to whether there is a reasonable basis to believe or suspect that critical circumstances exist. Commerce will issue its preliminary finding of critical circumstances within 30 days after the petitioner submits the allegation.<sup>7</sup>

#### Period of Investigation (POI)

The POI is January 1, 2020, through December 31, 2020.

#### Critical Circumstances Allegation

The petitioner alleges that there was a massive increase of imports of R-125 from China and provided monthly import data for the period October 2020 through March 2021.<sup>8</sup> The petitioner states that a comparison of total imports, by quantity, for the base period October 2020

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<sup>4</sup> See Petitioner's Letter, "Petitioner's Critical Circumstances Allegation," dated June 4, 2021 (Critical Circumstances Allegation).

<sup>5</sup> See Juxin's Letter, "Juxin Critical Circumstances Response," dated June 17, 2021 (Juxin Critical Circumstances Data); and Sanmei's Letter, "Submission of Zhejiang Sanmei's Critical Circumstances Information," dated June 17, 2021 (Sanmei Critical Circumstances Data).

<sup>6</sup> The final determination for this CVD investigation is currently due no later than October 21, 2021.

<sup>7</sup> See 19 CFR 351.206(c)(2)(ii). In this case, 30 days after the petitioner submitted the allegation would place the deadline on Sunday, July 4, 2021. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>8</sup> See Critical Circumstances Allegation at 8 and Exhibit 1.

through December 2020 to the comparison period January 2021 through March 2021, shows that imports of R-125 from China increased by 45.5 percent,<sup>9</sup> which is “massive” under 19 CFR 351.206(h)(2). The petitioner also alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Subsidies and Countervailing Measures Agreement of the World Trade Organization (SCM Agreement).<sup>10</sup>

#### Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement;<sup>11</sup> and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.<sup>12</sup> Imports must increase by at least 15 percent during the comparison period to be considered massive.<sup>13</sup>

#### Alleged Countervailable Subsidies Are Inconsistent with the SCM Agreement

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

<sup>12</sup> *See* 19 CFR 351.206(i).

<sup>13</sup> *See* 19 CFR 351.206(h)(2).

*Juxin, Sanmei, and All Other Companies*

On May 3, 2021, the petitioner filed a New Subsidies Allegation, alleging that Chinese producers of subject merchandise benefited from additional subsidies provided by the Government of China, including the Export Buyer's Credit Program and the Export Seller's Credit Program.<sup>14</sup> To determine whether there exists a reasonable basis to believe or suspect that an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence on the record pertaining to the petitioner's allegation that the Export Buyer's Credit Program and the Export Seller's Credit Program are inconsistent with the SCM Agreement. Specifically, with regard to these programs, the petitioner has alleged the elements of a subsidy,<sup>15</sup> supported with information reasonably available to the petitioner,<sup>16</sup> that appear to be export contingent, which would render them inconsistent with the SCM Agreement. Therefore, Commerce preliminarily determines that there is a reasonable basis to believe or suspect that alleged subsidies in the New Subsidies Allegation are inconsistent with the SCM Agreement. As a result, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met for Juxin, Sanmei, and all other exporters or producers not individually examined.

*Non-Responsive Companies*

As explained in our *Preliminary Determination*, we preliminarily applied total adverse facts available (AFA) to Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd. (Arkema); Daikin Fluorochemicals (China) Co., Ltd. (Daikin); Hongkong Richmax Ltd. (Hongkong); and Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (Weitron), pursuant to section 776(b) of the Act. In applying total AFA to these four companies, we preliminarily determined that each benefited from countervailable subsidies under the "Export

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<sup>14</sup> See Petitioner's Letter, "New Subsidies Allegation," dated May 3, 2021 (New Subsidies Allegation).

<sup>15</sup> See New Subsidies Allegation at 2-5.

<sup>16</sup> *Id. see also* Petitioner's Letter, "New Subsidies Allegation Supplemental Response," dated May 17, 2021.

Loans from Chinese State-Owned Commercial Banks (SOCBs)” program.<sup>17</sup> Although we did not make a preliminary finding as to whether the “Export Loans from SOCBs” program was inconsistent with the SCM Agreement in the *Preliminary Determination*, we now preliminarily find, pursuant to section 776(b) of the Act, that there is a reasonable basis to believe or suspect that the program, as alleged in the Petition and supported by information reasonably available to the petitioner, is export-contingent within the meaning of section 771(5A)(B) of the Act and, thus, inconsistent with the SCM Agreement.<sup>18</sup> We are making the inconsistency determination with regard to this program, which is the only program which we countervailed in the *Preliminary Determination* alleged to be inconsistent with the SCM Agreement. In so doing, we intend to limit the corresponding offset to the dumping margin (if one is found) in the companion antidumping duty investigation, which best fulfills our statutory mandate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,”<sup>19</sup> and induce future cooperation by companies in investigations where the petitioners allege the existence of programs potentially inconsistent with the SCM Agreement.

Thus, because we preliminarily find that the “Export Loans from Chinese SOCBs” program is export-contingent, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met for Arkema, Daikin, Hongkong, and Weitron.

### Massive Imports

Commerce compared the import volumes of Juxin’s and Sanmei’s reported shipments of subject merchandise for the five months immediately preceding and following the filing of the petition. Because the petition was filed on January 11, 2021, and in order to determine whether there was a massive surge in imports for the mandatory respondents, Commerce compared the total volume of shipments during the period of August 2020 through December 2020 (the base

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<sup>17</sup> See *Preliminary Determination* PDM at “Application of AFA: Non-Responsive Q&V Questionnaire Recipients.”

<sup>18</sup> See Countervailing Duty Investigation Initiation Checklist: Pentafluoroethane (R-125) from the People’s Republic of China, dated February 1, 2021.

<sup>19</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol.1 (1994) at 870, *reprinted in* 1994 U.S.C.C.A.N. 4040, 4199.

period) with the volume of shipments during the period of January 2021 through May 2021 (the comparison period).<sup>20</sup> We preliminarily determine that imports from both Juxin and Sanmei increased by more than 15 percent between the base and comparison periods.<sup>21</sup>

However, for purposes of our “massive imports” determination, we received information on the record about seasonality with respect to Sanmei’s imports which we considered as part of our analysis. Sanmei stated that, while it did experience a massive surge of imports of R-125 between the base and comparison periods, this surge was seasonal in nature. Sanmei also provided its shipment data for comparable periods in 2018-2019 and 2019-2020.<sup>22</sup> Based on our analysis of Sanmei’s shipment data reported for 2018 through 2021, we find that there is a consistent pattern of seasonality evidenced by a significant increase in shipments during the months of January through May (in 2019, 2020, and 2021), when compared to August through December (in 2018, 2019, and 2020) . As a result, we preliminarily find that the record reflects that any surge in Sanmei’s imports between the base and comparison periods in this investigation can be explained by seasonal trends. Therefore, we preliminarily determine that, although the surge in imports of R-125 from Sanmei during the comparison period was massive, the import surge was massive as a result of seasonal trends and, therefore, critical circumstances do not exist for Sanmei, in accordance with section 733(e)(1)(B) of the Act.<sup>23</sup>

To determine whether imports were massive for all other exporters or producers, Commerce’s normal practice is to subtract shipments reported by the cooperating mandatory respondents from shipment data for subject merchandise from Global Trade Atlas.<sup>24</sup> However,

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<sup>20</sup> See Juxin Critical Circumstances Data; *see also* Sanmei Critical Circumstances Data.

<sup>21</sup> See Memorandum, “Critical Circumstances Analysis,” dated July 6, 2021.

<sup>22</sup> See Sanmei Critical Circumstances Data. Juxin did not argue that its surge in imports between the base and comparison periods was due to seasonal trends nor did it provide data to permit Commerce to perform a seasonality analysis.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., *Antidumping Duty Investigation on Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 18796, 18798 (May 2, 2019) (*Kegs from Mexico Preliminary Critical Circumstances Determination*).

as discussed in the *Initiation Notice*,<sup>25</sup> the Harmonized Tariff Schedule of the United States number under which the subject merchandise enters is a basket category under which non-subject merchandise may enter. Therefore, consistent with our practice, we preliminarily relied on the data of the mandatory respondents as “facts available,” in accordance with section 776(a)(1) of the Act, to determine whether imports from all other exporters or producers were massive.<sup>26</sup> Because we preliminarily determine that imports from both Juxin and Sanmei increased by more than 15 percent between the base and comparison periods, we also preliminarily determine that imports from all other exporters or producers were massive.

Finally, for Arkema, Daikin, Hongkong, and Weitron, we preliminarily determine, pursuant to section 776(b) of the Act, that there was a massive surge in imports between the base and comparison periods.

Accordingly, consistent with section 703(e)(1) of the Act, we preliminarily determine that critical circumstances exist with respect to Arkema, Daikin, Hongkong, Juxin, Weitron, and all other exporters and producers not individually examined.

#### Final Determination

We will make a final determination concerning critical circumstances in the final determination of this investigation, which is currently scheduled for October 25, 2021.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.<sup>27</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal

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<sup>25</sup> See Checklist, “Countervailing Duty Investigation Initiation Checklist: Pentafluoroethane (R-125) from the People’s Republic of China,” dated February 3, 2021 (Initiation Checklist); *see also Initiation Notice*.

<sup>26</sup> See, e.g., *Kegs from Mexico Preliminary Critical Circumstances Determination*, 84 FR at 18798.

<sup>27</sup> See 19 CFR 351.309(d)(1).

briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

#### Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for Arkema, Daikin, Hongkong, Juxin, Weitron, and all other exporters and producers, we intend to direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse for consumption, on or after March 27, 2021, which is 90 days prior to the date of publication of the *Preliminary Determination* in the *Federal Register*. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

#### U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, we intend to notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: July 6, 2021.

James Maeder,  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations.